

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP796-CR

Cir. Ct. No. 2010CM587

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID J. LAWRENCE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Monroe County: MARK L. GOODMAN, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ David Lawrence appeals the judgment of conviction and sentence for domestic abuse battery and domestic abuse disorderly conduct, and the order denying his postconviction motion for sentence

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

modification because of a new factor. Lawrence contends that additional information regarding the severity of his mental health issues and the nature of his medication regimen presented new factors that justified modifying his sentence by removing the thirty-day jail sentence that the circuit court imposed as a condition of Lawrence's probation. The circuit court found that the additional information was not sufficient to warrant the sentence modification that Lawrence requested. I agree with the circuit court, and therefore affirm.

BACKGROUND

¶2 Lawrence entered pleas of no contest to the charges of domestic abuse battery and domestic abuse disorderly conduct. The State and Lawrence jointly recommended that the circuit court place Lawrence on probation for a period of twelve months. The circuit court withheld sentence and placed Lawrence on probation for a period of eighteen months. The circuit court also ordered Lawrence to serve a thirty-day jail sentence as a condition of his probation.

¶3 At the sentencing hearing, the circuit court inquired about Lawrence's mental health, and confirmed that Lawrence suffered from bipolar disorder. Lawrence's attorney notified the circuit court that Lawrence was taking medication to treat the bipolar disorder, and the circuit court noted that Lawrence had a history of being noncompliant with his medications. Lawrence told the circuit court that he also had social anxiety disorder, and that the combination of bipolar disorder and social anxiety disorder "create[d] a lot of anxiety for him as far as dealing with any kind of unknown situation."

¶4 Shortly after the sentencing hearing, Lawrence suffered a psychological breakdown and was hospitalized. Lawrence was experiencing

suicidal thoughts and planned to overdose on medication because of the impending jail sentence.

¶5 Lawrence moved to stay the conditional jail sentence pending appeal, and the circuit court granted the motion. Lawrence then moved for postconviction relief on the ground that a new factor justified modifying his sentence to remove the conditional jail sentence. The new factor, according to Lawrence, was that at the time of the sentencing hearing, the circuit court was not aware that Lawrence suffered from mental illnesses in addition to bipolar disorder and social anxiety disorder, and was not aware of the nature of Lawrence's medication regimen. Along with his motion, Lawrence submitted a letter from his doctor stating the doctor's concern that serving jail time would worsen Lawrence's multiple psychiatric conditions. With regard to Lawrence's medication, Lawrence contended that he would not be able to take one or more of his medications while in jail because the medications contained narcotics.

¶6 The circuit court held a hearing on Lawrence's motion for sentence modification. At the hearing, the circuit court explained that, at the time of sentencing, it considered that Lawrence had bipolar disorder and had a history of being noncompliant with his medications. The circuit court considered a number of additional factors that will be addressed below, and found that the information that Lawrence presented regarding the severity of his mental health issues and the nature of his medication regimen was "not enough of a new factor" to warrant the sentence modification that Lawrence sought. The circuit court denied Lawrence's motion for sentence modification, and Lawrence now appeals.

DISCUSSION

¶7 On appeal, Lawrence argues that the additional information about the severity of his mental health issues and the nature of his medication regimen presented new factors that justified modifying his sentence to remove the conditional jail sentence. The State does not argue that the additional information was not a new factor, but asks this court to affirm the circuit court's discretionary determination that the additional information was not sufficient to warrant the sentence modification that Lawrence requested.

¶8 Sentence modification requires two steps. First, the defendant must demonstrate by clear and convincing evidence the existence of a new factor. *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. Second, the circuit court must determine whether the new factor justifies a modification of the sentence. *Id.*, ¶37. This court reviews the circuit court's determination under an erroneous exercise of discretion standard. *Id.*, ¶33.

¶9 In this case, the circuit court found that the additional information regarding the severity of Lawrence's mental health issues and the nature of his medication regimen was not sufficient to warrant the sentence modification that Lawrence requested. Assuming, without deciding, that the additional information constituted a new factor, I conclude that the circuit court reasonably exercised its discretion when it decided not to modify Lawrence's sentence in light of that additional information.

¶10 The circuit court provided a reasoned explanation on the record for why it declined to modify Lawrence's sentence to remove the conditional jail time. In addition to considering the additional information provided by Lawrence, the circuit court also considered a number of factors that it believed justified the

conditional jail sentence, including: (1) the severity of the underlying offense which, according to the circuit court, involved “the physical battering of women”; (2) the circuit court’s concerns about Lawrence’s credibility, because Lawrence had previously made false representations to his medical providers about his alcohol and drug use; (3) that Lawrence “seemed more accepting of having to go to jail soon and didn’t complain of depression”; (4) the fact that many criminal defendants with substance abuse problems and mental health issues are sentenced to time in jail; and (5) Lawrence’s history of violent behavior. Based on these factors, the circuit court concluded that the additional information regarding the severity of Lawrence’s mental health issues and the nature of his medication regimen was not sufficient to warrant the removal of the conditional jail time sought by Lawrence.

¶11 The record reflects that the circuit court engaged in a detailed process of reasoning to reach its determination. I therefore conclude that the circuit court reasonably exercised its discretion when it determined that the additional information was not sufficient to warrant the sentence modification that Lawrence requested.

CONCLUSION

¶12 For the reasons set forth above, I affirm the circuit court’s finding that the additional information regarding the severity of Lawrence’s mental health issues and the nature of his medication regimen was not sufficient to warrant sentence modification.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE § 809.23(1)(b)4.

